

or where other procedures are explicitly provided for by statute, all contracts and other written agreements which are executed after the effective date of these regulations between an agency and any person or entity must include the following or substantially similar language:

Any monies that are payable or may become payable from the United States under this agreement to any person or legal entity not an agency or subdivision of a State or local government may be subject to administrative offset for the collection of a delinquent debt the person or legal entity owes to the United States, under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3701, 3711, 3716-3719); 4 CFR part 102 and subpart B of this part. Information on the person's or legal entity's responsibility for a commercial debt or delinquent consumer debt owed the United States will be disclosed to consumer or commercial credit reporting agencies.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990]

§ 3.22 Definitions.

In this subpart:

(a) *Debt management officer* means an agency employee responsible for collection by administrative offset of debts owed the United States.

(b) *Contracting officer* has the same meaning as in 41 U.S.C. 601.

(c) *Creditor agency* means a Federal agency to whom a debtor owes a monetary debt. It need not be the same agency that effects the offset.

(d) *Offsetting agency* means an agency that withholds from its payment to a debtor an amount owed by the debtor to a creditor agency, and assures that the funds are paid to the creditor agency to be applied to the debt.

(e) *Reviewing officer* means an agency employee responsible for conducting a hearing or providing documentary review on the existence of the debt and the propriety of administrative offset.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990]

§ 3.23 Collection by administrative offset.

(a) Whenever feasible, each agency of the Department of Agriculture must use, or request any other Federal agency to use, administrative offset in ac-

cordance with 31 U.S.C. 3716 and 4 CFR 102.3 to collect debts due the United States. The debt need not be reduced to judgment or be undisputed.

(b) The feasibility of collecting a debt by administrative offset will be determined on a case-by-case basis considering among other factors the following:

(1) Legal impediments to administrative offset, such as contract provisions, or degree of certainty as to the factual basis (other than the debt amount) of the Government's claim.

(2) Practicality, considering such questions as costs in time and money of administrative offset relative to the size of the debt.

(3) Whether offset would substantially interfere with or defeat the purposes of a program authorizing payments against which offset is contemplated, as where payment is an advance for future performance by the debtor of a service the Government desires.

(4) Whether the agency has substantiated the existence of the debt.

(c) The offset will be effected 31 days after the debtor receives a Notice of Intent to Collect by Administrative Offset, or when a stay of offset expires, unless the agency determines under § 3.26 that immediate action is necessary. If the debtor owes more than one debt, amounts recovered through administrative offset may be applied to them in any order, with attention to applicable statutes of limitation.

(d) These procedures will be used to collect any debt subject to 31 U.S.C. 3716, including contract debts, but not including intracontractual claims or intracontractual disputes. A contracting officer administering a claim under the Contract Disputes Act (CDA), 41 U.S.C. 601-613 must promptly refer the claim to the agency debt management officer for consideration of administrative offset apart from CDA proceedings.

(e) An agency debt management officer will determine the prima facie existence of the debt, the feasibility of administrative offset as a means of collection and what monies, if any, are payable or may become payable to the debtor. No agency employee may act as

debt management officer for the consideration of collection by administrative offset in a matter for which the employee was a contracting officer.

(f) An agency reviewing officer will afford debtors review of the issue of administrative offset under these rules. No agency employee may act as a reviewing officer for the consideration of collection by administrative offset in a matter for which the employee was a contracting officer or a debt management officer.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990]

§ 3.24 Coordinating administrative offset with other Federal agencies.

(a) A Government list or other notice, naming debtors and their creditor agencies, which is provided to USDA will constitute a request for administrative offset.

(b) Any agency which requests another agency to effect administrative offset must certify that the debtor owes the debt (including the amount and basis of the debt and the due date of the payment) and that all of the applicable requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met.

(c) An agency which is requested by another agency to effect administrative offset must not do so without obtaining a written certification that the debtor owes the creditor agency a debt (including the amount and basis of the debt and the due date of the payment) and that all of the applicable requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met. An offsetting USDA agency may rely on the information contained in a requesting creditor agency's certification.

(d) Only a creditor agency may agree to an installment repayment system or compromise, suspension or termination of the collection process.

(e) A USDA agency which is requested by another agency to effect administrative offset may decline for good cause. Good cause includes direct or indirect disruption of the offsetting agency's essential program operations that might result from the offset. The refusal and the reasons must be sent in writing to the creditor agency.

§ 3.25 Notice requirements before offset.

(a) Before an agency effects administrative offset, the creditor agency must provide the debtor with a minimum of 30 calendar days' written notice that unpaid debt amounts will be collected by administrative offset against any money that the United States is going to pay to the debtor, unless the creditor agency determines immediate action is necessary under § 3.26, or the debtor enters into a repayment agreement or requests review.

(b) The Notice of Intent to Collect by Administrative Offset must be served on the debtor by personal delivery, first class mail, or certified mail and will state:

(1) The amount of the debt, the date it was incurred, the name and address of the offsetting agency, and the program under which the debt was incurred.

(2) The rate of interest accrued from the date of mailing or other delivery of the initial demand letter, and the amount of any other penalties or administrative costs added to the principal debt.

(3) The creditor agency's intention to collect the debt by administrative offset against any funds that might become available, until the principal debt and all accumulated interest and other charges are paid in full.

(4) The date on which administrative offset will be effected, unless the creditor agency determines immediate action is necessary under § 3.26, or the debtor enters into a repayment agreement or requests a review.

(5) That the debtor has a right to inspect and copy agency or other Department records related to the debt. The debtor must pay copying costs unless they are waived by the agency.

(6) That the debtor may enter into a written agreement to repay the debt, which must be approved by the creditor agency.

(7) That the debtor has a right to obtain review of the agency's determination that the debt exists and the propriety of administrative offset.

(8) That a repayment agreement or request for review may be sought only from the creditor agency and not the offsetting agency.